



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. J. Alexander
County Attorney
Burleson County
Caldwell, Texas

Dear Mr. Alexander:

Opinion No. O-6116
Re: Whether county clerk
elect can execute bond
and take oath of office
while in military ser-
vice abroad.

Your recent opinion request has been received and considered. We quote from same as follows:

"John J. Toupal, the present County Clerk of Burleson County, Texas, is in the United States Army and is stationed in England, with some probability of being sent into France.

"Mr. Toupal is candidate for the same office, and is unopposed in the Democratic primary; and will, in all probability be re-elected County Clerk in November.

"Kindly advise me whether or not Mr. Toupal can execute his bond while abroad; and whether or not he can take the oath of office while he is abroad (Constitution Art. 16, Sec. 1; Vernon Statutes Arts. 1935 & 16.)

"If the above inquiries are answered in the affirmative, then please advise whether or not the oath of office must be administered to Mr. Toupal by the officials designated in Vernon's Statutes Art. 26; or whether Vernon's Statutes Art. 6602 can be extended to take care of this situation."

Hon. W. J. Alexander, page 2

Article 16, V. A. C. S., provides that each officer in this State, whether elected or appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed by Article 16, Section 1, of the Constitution of this State; and if he shall be required by law to give an official bond, said oath shall be filed with said bond.

Said Section 1, Article 16, of the Constitution of Texas, provides the form of oath or affirmation to be used.

Article 1937, V. A. C. S., provides that each county clerk shall, before entering upon the duties of his office give bond, etc.

Article 5998, V. A. C. S., provides that the official bond of each officer shall be executed by him with two or more good and sufficient sureties or a solvent surety company authorized to do business in this State.

Article 26, V. A. C. S., (3) provides that all oaths, affidavits or affirmations may be administered and a certificate of the fact given, if without the United States, before any notary public, or any minister, commissioner or charge d'affaires of the United States, resident in and accredited to the country where the affidavit may be taken, or any consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States, resident in such country.

Article 6602, V. A. C. S., provides for the making of an acknowledgment or proof of an instrument of writing for record before certain officials, and would have no application to the taking of an official oath.

We see no legal reason why Mr. Toupal, if elected to the office of county clerk, could not execute his official bond while on military service in a foreign country, and also take and subscribe the oath prescribed by the Constitution before any person authorized by said Article 26 to administer same.

Trusting this fully answers your questions, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Robert L. Lattimore, Jr.
Robert L. Lattimore, Jr.
Assistant

W. J. Alexander
21. 1942

ATTORNEY GENERAL OF TEXAS
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APPROVED
OPINION
COMMITTEE
BY *Blut*
CHAIRMAN